Virginia Department of Health Professions
Board of Counseling

Agenda
Regulatory Committee Meeting

January 21, 2022
9960 Mayland Dr, 2nd Floor
10:00 a.m.

Call to Order – Holly Tracy, LPC, LMFT, Committee Chairperson

- Welcome and Introductions
- Mission of the Board — Page 2

Approval of Agenda

Approval of Minutes

- Regulatory Committee Meeting – May 14, 2021* — Page 3

Public Comment

The Committee will not receive comment on any pending regulation process for which a public comment period has closed or any pending or closed complaint or disciplinary matter.

Discussion and Consideration of Telehealth Guidance Document

- Updated Draft BOC Telehealth Guidance Document — Page 7
- Original Draft BOC Telehealth Guidance Docment — Page 12
- Board of Medicine Telemedicine Guidance Document — Page 15
- Board of Physical Therapy Guidance Document — Page 23

Next Meeting – April 22, 2022

Meeting Adjournment

*Requires a Committee Vote.This information is in **DRAFT** form and is subject to change. The official agenda and packet will be approved by the public body at the meeting and will be available to the public pursuant to Virginia Code Section 2.2-3707(F).

Virginia Department of
Health Professions
Board of Counseling

MISSION STATEMENT

Our mission is to ensure safe and competent patient care by licensing health professionals, enforcing standards of practice, and providing information to health care practitioners and the public.

VIRGINIA BOARD OF COUNSELING
REGULATORY COMMITTEE MEETING
DRAFT
Friday, May 14, 2021

TIME AND PLACE:	Consistent with Amendment 28 to HB29 (the Budget Bill for 2018-2020) and the applicable provisions of § 2.2-3708.2 in the Freedom of Information Act, the Committee convened the meeting virtually to consider such regulatory and business matters as are presented on the agenda necessary for the committee to discharge its lawful purposes, duties, and responsibilities.
PRESIDING:	Holly Tracy, LPC, LMFT, Chairperson
COMMITTEE MEMBERS PRESENT:	Johnston Brendel, Ed.D, LPC, LMFT Kevin Doyle, Ed.D, LPC, LSATP Vivian Sanchez-Jones, Citizen Member Terry Tinsley, PhD, LPC, LMFT, CSOTP
STAFF PRESENT:	Sandie Cotman, Licensing Specialist Jaime Hoyle, JD, Executive Director Jennifer Lang, Deputy Executive Director Charlotte Lenart, Deputy Executive Director-Licensing Sharniece Vaughan, Licensing Specialist Elaine Yeatts, DHP Senior Policy Analyst
ADOPTION OF AGENDA:	Agenda was adopted as presented.
APPROVAL OF MINUTES:	With no requested changes the minutes from the January 22, 2021 Regulatory Meeting passed unanimously.
PUBLIC COMMENT:	There were no public comments.
PRESENTATION:	Dr. LoriAnn Stretch providing a PowerPoint presentation on her recommendations for telehealth regulatory and guidance document amendments. After a question and answer session, the Committee shared their appreciation to Dr. Stretch. Dr. Doyle suggested that the Board provide suggestions for best practices in a newsletter and a virtual summit. The Committee discussed the movement toward Artificial Intelligence (AI) and the need for the Board to be prepared for this type of technology. Ms. Yeatts suggested that this issue be taken to the Department of Health Profession Board. Dr. Doyle, as the representative for the Board of Health Professions, and Ms. Hoyle will submit a letter with the Committee's request.

Dr. Brendel stated that this is the appropriate time to initiate immediate guidance through a newsletter, and during the interim the Board can update the guidance document on telehealth and for the long range propose changes to the regulations. Ms. Hoyle reminded the Committee that the guidance document purpose is it explain the Regulations.

Staff will take the suggestions outlined in Dr. Stretch's report and create a draft guidance document by updating the language and tying the recommendations back to regulations. Once completed, staff will present to draft to the Attorney General Office for their feedback and present the draft at the next Regulatory Committee meeting.

Ms. Yeatts suggested that perhaps the Board should invite the other Behavioral Science Boards to review the draft to in order for all three Board to come up consistent guidance on providing telehealth services.

COUNSELING COMPACT:

Dr. Brendel would like the Board to consider being one of the first ten states to initial rulemaking so that Virginia can be a member of the compact commission. Dr. Doyle stated that one state has passed counseling compact legislation and four states are currently pursing changes to their legislation. The Committee discussed the objections and pushback in reference to the required education wording. The frustration in the field and the momentum for ease of portability appears to be overweighing the objections in the degree/coursework requirements.

Ms. Yeatts suggested that the Board wait to review the rules that will be established by the commissions before making a decision to initial rulemaking to join the compact. Dr. Doyle agreed that Ms. Yeatts suggestion is valid.

LEGISTLATIVE AND REGULATORY ACTIONS:

Ms. Yeatts discussed the Board's current regulatory actions.

18VAC 115-20 Regulations Governing the Practice of Professional Counseling – Unprofessional conduct-conversion therapy (Action 5225); Final – At Governor's Office for 24 days

18VAC 115-20 Regulations Governing the Practice of Professional Counseling – Periodic review (action 5230); Proposed - At Governor's Office for 158 days

18VAC 115-20 Regulations Governing the Practice of Professional Counseling – Resident license (action 5371);
Final – Effective 6/23/2021

18VAC 115-40 Regulations Governing the Certification of Rehabilitation Providers - Periodic review (Action 5305);
Final – At Governor's Office for 24 days

18VAC 115-90 Regulations Governing the Licensure of Art Therapists (under development) – NOIRA – Register Date: 3/1/2021, Comment ended: 3/31/2021

Ms. Yeatts discussed the Art Therapy Advisory Board's role and the recent Art Therapy Advisory Board meeting. Ms. Yeatts stated that there was no consensus on proposed regulatory language. The Advisory Board will meet again and will present the propose Regulations at the next Committee meeting.

NEW BUSINESS:

Definition of Human Service Degree

The Committee discussed the QMHP reviews and the need for a human services definition that outlines the elements of a human service. Having a human services definition would better inform the applicant and help support the consistency of the reviews.

After much discussion, the Committee stated that it is apparent by the types of disciplinary files that they review that there is a need for additional training and education. The Board's mission is to protect the public and the Committee felt that the review of the coursework needed to be more restrictive to ensure that applicants have the minimum education and training in order to provide services to the most vulnerable population.

Staff will research different organizations that may define human services to provide a draft to the Committee at the next meeting. Ms. Hoyle suggested that we might want to initiate additional training requirements prior to providing services to try to prevent future disciplinary issues.

Ms. Lenart indicated that the Board continues to see applicants that are registering for QMHP-C and QMHP-A without registering for the QMHP-Trainee registration when employed at a DBHDS licensed facility. Staff continues to try to education applicants and supervisor on the registration requirement. Staff will discuss this issue with DBHDS and DMAS to see if all three Agencies can work together to education applicants and Agencies on the requirements.

Ms. Lang suggest that maybe in the future the Board consider requiring ethics training prior to being approved for registration.

The Committee discussed the acceptance of Sociology degrees until May 31, 2021. The Board agreed that the applicant must submit an application prior to May 31, 2021 in order for the degree to be accepted as a human service degree toward QMHP-C registration.

Code Change for Agency Subordinate Authority to Conduct Credential Reviews

Ms. Hoyle and Ms. Lang discussed the possible need for a change in the Code to allow Agency Subordinate to conduct credential

reviews to help streamline the process. Ms. Lang gave information on the role of the Agency Subordinate and Informal Conference Committee.

Ms. Lang will take this issue to both the Board of Psychology and Board of Social Work for their thoughts. Ms. Yeatts indicated that potential change would affect all Boards within the Agency.

NEXT SCHEDULED MEETING: The next Committee meeting is scheduled for August 6, 2021 at 10:00 a.m.

ADJOURNMENT: The meeting adjourned at 12:25 p.m.

Holly Tracy, LPC, LMFT
Chairperson

Date

Jaime Hoyle, JD
Executive Director

Date

Virginia Board of Counseling

Guidance on the Use of Telehealth for the Practice of Counseling, Marriage and Family Therapy, and Substance Abuse Treatment, including the use of Telehealth for the Supervision of Residents.

Definitions:

- *Telehealth- behavioral or non-medical services provide via technology*
- *Telehealth Services "means the use of telecommunications and information technology to provide access to health assessments, diagnosis, intervention, consultation, supervision, and information across distance. It includes the use of such technologies as telephones, facsimile machines, electronic mail systems, store-and-forward technologies, and remote patient monitoring devices that are used to collect and transmit patient data for monitoring and interpretation*

Section One: Preamble

The Virginia Board of Counseling ("Board") recognizes that using telehealth services in the delivery of clinical counseling, marriage and family therapy, and substance abuse treatment services offers potential benefits in the provision of mental health care. The Virginia General Assembly has not established statutory parameters regarding the provision and delivery of telehealth services. Therefore, practitioners must apply existing laws and regulations to the provision of telehealth services. The Board issues this guidance document to assist practitioners with the application of current laws to telehealth service practices.

Practitioners should not construe these guidelines to alter the scope of practice of any mental health care provider or authorize the delivery of health care services in a setting, or in a manner, not authorized by law. In fact, these guidelines support a consistent standard of care and scope of practice notwithstanding the delivery tool or business method used to enable practitioner-to-patient communications. A practitioner should conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the particular patient presentation. As such, some situations and patient presentations are appropriate for the utilization of telehealth services as a component of, or in lieu of, in-person provision of mental health care, while others are not. The practitioner is responsible for making this determination, and in doing so must adhere to applicable laws and standards of care.

The Board developed these guidelines to educate licensees as to the appropriate use of telehealth services in the practice of counseling, marriage and family therapy, and substance abuse treatment. The Board remains committed to ensuring patient access to the convenience and benefits telehealth services afford, while promoting the responsible provision of mental health care services.
The Board expects practitioners who provide mental health care, electronically or otherwise, maintain the highest degree of professionalism and should:
 Place the welfare of patients first;

 Maintain acceptable and appropriate standards of practice;
 Adhere to recognized ethical codes governing the applicable profession;
 Adhere to applicable laws and regulations;
 Properly supervise residents in counseling, residents in marriage and family therapy, and residents in substance abuse practice as laws and regulations require;
 Protect patient confidentiality; and,
 Utilize best practices of telehealth services to ensure client confidentiality and the security of all transmissions.

Section Two: Establishing the Practitioner-Patient Relationship.
The practitioner-patient relationship is fundamental to the provision of acceptable mental health care. The Board expects practitioners to recognize the obligations, responsibilities, and patient rights associated with establishing and maintaining a practitioner-patient relationship.
Where no previous practitioner-patient relationship exists:

1. A practitioner must take appropriate steps to establish a practitioner-patient relationship consistent with the guidelines identified in this document, with Virginia law, and with any other applicable law.
2. While each circumstance is unique, such practitioner-patient relationships may be established using telehealth services provided these services meet the standard of care.

The Board discourages a practitioner from rendering professional advice and/or care using telehealth services without:

1. Fully verifying and authenticating the location and, to the extent possible, confirming the identity of the requesting patient;
2. Disclosing and validating the practitioner's identity and applicable credential(s); and,
3. Obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding the use of telemedicine services.

An appropriate practitioner-patient relationship has not been established when the identity of the practitioner may be unknown to the patient.

Section Three: Guidelines for the Appropriate Use of Telehealth Services.
The Board has adopted the following guidelines for practitioners utilizing telehealth services in the delivery of patient care, regardless of an existing practitioner-patient relationship prior to an encounter.
<u>Licensure:</u>
The practice of counseling, marriage and family therapy, and substance abuse treatment occurs where the patient is located at the time telehealth services are used, and insurers may issue reimbursements based on where the practitioner is located. Therefore, a practitioner must hold a license in the jurisdiction where the patient is located and the jurisdiction where the practitioner is located. Practitioners who treat through online service sites must possess appropriate licensure in all jurisdictions where patients receive care. *To ensure appropriate insurance coverage, practitioners must make certain that they are compliant with federal and state laws and policies regarding reimbursements.*

Evaluation and Treatment of the Patient:
A licensee shall determine the patient's readiness to engage intellectually, emotionally, physically, linguistically, and functionally with technology. A licensee must verify that each patient understands the purpose, risks, and operation of any technology.

A licensee must obtain documented evaluation and collection of relevant clinical history commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided prior to providing treatment. The Board will hold treatment and consultation recommendations made in an online setting to the same standards of appropriate practice as those in traditional, in-person encounters. Treatment based solely on an online questionnaire does not constitute an acceptable standard of care.

Informed Consent:
A licensee must obtain and maintain evidence documenting appropriate patient informed consent for the use of telehealth services. Appropriate informed consent should, as a baseline, include the following:
 Identification of the patient, the practitioner, and the practitioner's credentials;
 Types of activities permitted using telehealth services (e.g. appointment scheduling, patient education, etc.);
 Risks, limitations, and benefits of telehealth modality;
 Agreement by the patient that it is the role of the practitioner to determine whether the condition diagnosed and/or treated is appropriate for a telehealth encounter;
 Details on security measures taken with the use of telehealth services, such as encrypting date of service, password protected screen savers, encrypting data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures;
 Limits of and threats to confidentiality;
 Hold harmless clause for information lost due to technical failures;
 Alternative means of communication should technology fail;
 Documentation requirements, including retention and destruction;
 Requirement for express patient consent to forward patient-identifiable information to a third party;
 Emergency resources local to client and emergency protocol;
 Social media and relationship policy;
 Verification process for provider and client;
 Prohibition of recording and distributing session content without mutual consent; and,
 Cultural and linguistic considerations.

Health Records:
The health record should include, if applicable, copies of all patient-related electronic communications, including patient-practitioner communication, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telehealth services. The health record should also include informed consents obtained in connection with an encounter involving telehealth services. The patient record established during the use of telehealth services must be accessible to both the practitioner and the patient, and consistent with all established laws and regulations governing patient healthcare records.

Privacy and Security of Patient Records and Exchange of Information:
Practitioners should maintain written policies and procedures documentation, maintenance, and transmission of the records of encounters using telehealth services. Such policies and procedures should address:
1. Privacy;
2. Health-care personnel (in addition to the practitioner addressee) who will process messages;
3. Hours of operation;
4. Types of transactions permitted electronically;
5. Required patient information to be included in the communication, such as patient name, identification number, and type of transaction,
6. Archival and retrieval, and,
7. Quality oversight mechanisms.
Practitioners should periodically evaluate policies and procedures for currency and maintain these policies and procedures in an accessible and readily available manner for review.

Section Four: Electronic Medical Services That Do Not Require Licensure.
The Code of Virginia has two sections of law that are pertinent to telehealth and the requirement of a Virginia license to provide services to a patient residing in the Commonwealth. The first is the "consultant exemption" found in § 54.1-2901 which lists Exceptions and Exemptions Generally to licensure. Subsection (A)(15) reads as follows: "Any legally qualified out-of-state or foreign practitioner from meeting in consultation with legally licensed practitioners in this Commonwealth." This statute intends to have a Virginia practitioner involved in the care of the patient when a practitioner in another state/country consults with the Virginia practitioner or the patient. It provides an opportunity for Virginia residents to benefit from the expertise of practitioners known for specializing in certain conditions. There must be regular communication between the consultant and the Virginia practitioner during the provision of the consultation/care.

The second section of the Code of Virginia pertinent to telemedicine is § 38.2-3418.16 of the Code of Virginia, which provides the definition of telemedicine in the Insurance Title. The section enumerates what does and what does not constitute telemedicine. Section 38.2-3418.16 defines telemedicine as "the use of electronic technology or media, including interactive audio or video, for the purpose of diagnosing or treating a patient, providing remote patient monitoring services, or consulting with other health care providers regarding a patient's diagnosis or treatment, regardless of the originating site and whether the patient is accompanied by a health care provider at the time such services are provided." To practice telemedicine into Virginia requires a license from the Board of Counseling. The Board notes that § 38.2-3418.16 states "Telemedicine services" does not include an audio-only telephone, electronic mail message, facsimile transmission, or online questionnaire. The Board believes that these communications do not constitute telemedicine, and therefore do not require licensure, when used in the follow-up care of a Virginia resident with whom a bona fide practitioner-patient relationship has been previously established. The establishment of a new practitioner-patient relationship requires a Virginia license and must comport with the requirements for telemedicine found in § 54.1-3303 of the Code of Virginia.

Section Five: Guidance Document Limitations.
The practitioner shall not construe anything in this document to limit the authority of the Board to investigate, discipline, or regulate its licensees pursuant to applicable Virginia statutes and regulations. Additionally, the practitioner shall not construe anything in this document to limit the Board's ability to review the delivery or use of telehealth services by its licensees for adherence to the standard of care and compliance with the requirements set forth in the laws and regulations of the

Commonwealth of Virginia. Furthermore, this document does not limit the Board's ability to determine that certain situations fail to meet the standard of care or standards set forth in laws and regulations despite technical adherence to the guidance produced herein.

Virginia Board of Counseling

Guidance on the Use of Telehealth for the Practice of Counseling, Marriage and Family Therapy, and Substance Abuse Treatment, including the use of Telehealth for the Supervision of Residents.

Definitions:

- Telehealth- behavioral or non-medical services provide via technology
- Telehealth Services "means the use of telecommunications and information technology to provide access to health assessments, diagnosis, intervention, consultation, supervision, and information across distance. It includes the use of such technologies as telephones, facsimile machines, electronic mail systems, store-and-forward technologies, and remote patient monitoring devices that are used to collect and transmit patient data for monitoring and interpretation

The following prefaces the Board's regulations for Standards of Practice (18VAC115-20-130):

The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of counseling.

Therefore, the standards of practice set forth in section 130 of the regulations and in the Code of Virginia apply regardless of the method of delivery. The Board of Counseling recommends the following when a licensee or resident uses telehealth services as the delivery method for professional counseling, marriage and family therapy, and as a substance abuse practititioner:

Intake and Appropriate Assessment (118VAC115-20-130(B)(9)

1. Determine the client's readiness to engage intellectually, emotionally, physically, linguistically, and functionally with technology.
2. Verify that each client understands the purpose, risks, and operation of any technology.

Disclosures (118VAC115-20-130(B)(9)

1. Verbal and in writing.
2. For example:
    a. Provider's credentials, location, and contact information;
    b. Types of services available;
    c. Risks, limitations, and benefits of telehealth modality;
    d. Technology requirements and recommendations;
    e. Alternate means of communication should technology fail;
    f. Who else may have access to communication and session content;
    g. Anticipated response time and preferred mode of communication;
    h. Limits of and threats to confidentiality;
    i. Documentation requirements, including retention and destruction;

j. Emergency resources local to client and emergency protocol
k. Social media and relationship policy;
l. Potential insurance coverage of telehealth sessions (as applicable)
m. Time zone differences;
n. Verification process for provider and client;
o. Prohibition of recording and distributing session content without mutual consent;
p. Cultural and linguistic considerations; and,
q. Licensure portability across state lines and scope of practice requirements

Informed Consent (118VAC115-20-130(B)(9)

1. Written or Oral
2. Option for in-person
3. Document consent
4. Minors

Counseling Relationship and Boundaries

1. Explain and establish professional boundaries (118VAC115-20-30(D)(4)
2. Appropriate use and limitations of technology within the counseling relationship (118VAC115-20-130(B)(4)

Client Verification

1. Verify the client's identity through a government issued identification
2. Verification procedures through passwords or identification
3. Verify the client's location
4. Alternate means of communication

Standards of Care 118VAC115-20-30(B)(1)

1. Maintain an emergency plan
2. Contact information of emergency services local to the client's location

Confidentiality 118VAC115-20-30(C)

1. Abide by current privacy laws and regulations related to health care information and the client's right to access their records.
2. Utilize best practices of telehealth services to ensure client confidentiality and the security of all transmissions.

Standards of Care

1. Specific to telehealth services that are appropriate to a client's developmental level, intellectual and linguistic abilities, mental and physical needs, and treatment goals
2. Minimum be consistent with the stands of care for in-person counseling services

Scope of Practice

1. Persons providing telehealth services to clients located in Virginia must hold an active license in the Commonwealth of Virginia.
2. Verify the regulations of the state board who has jurisdiction where the client is located.

Documentation

1. Create and maintain a record for each client that documents informed consent, disclosures provided, an emergency plan with contacts local to the client, client verification, session notes, treatment plan, assessment results, communications with the client, and termination. (118VAC115-20-30(C)
2. Retention and access (118VAC115-20-30(C)(5)

Virtual Presence

1. Clearly distinguish between personal and professional presence and maintain a social media policy
2. Working electronic links to relevant certification and licensure boards
3. Do not use electronic search engines or social media to gather information about clients

Current Technology

1. Use two-way interactive audio, visual, or audio-visual technologies that utilize current encryption standards
2. Consistent and intentional

Training and Competence

1. Areas of competence achieved through education, training, and supervision (118VAC115-20-30(B)(2)
2. Six hours of training specific to telehealth services before commencing telehealth
3. Two hours minimum of continuing education with each licensure renewal

Multiculturalism

1. Account for cultural, linguistic, and accessibility considerations that may affect the effectiveness and quality of telehealth services.

Virginia Board of Medicine

Telemedicine
NOTE: DOES NOT REFLECT RECENT FEDERAL GUIDANCE ON HIPAA COMPLIANCE
(*See link on BOM website for current federal guidance*)

Section One: Preamble.

The Virginia Board of Medicine ("Board") recognizes that using telemedicine services in the delivery of medical services offers potential benefits in the provision of medical care. The appropriate application of these services can enhance medical care by facilitating communication between practitioners, other health care providers, and their patients, prescribing medication, medication management, obtaining laboratory results, scheduling appointments, monitoring chronic conditions, providing health care information, and clarifying medical advice. With the exception of prescribing controlled substances, the Virginia General Assembly has not established statutory parameters regarding the provision and delivery of telemedicine services. Therefore, practitioners must apply existing laws and regulations to the provision of telemedicine services. The Board issues this guidance document to assist practitioners with the application of current laws to telemedicine service practices.

These guidelines should not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not authorized by law. In fact, these guidelines support a consistent standard of care and scope of practice notwithstanding the delivery tool or business method used to enable practitioner-to-patient communications. For the purpose of prescribing controlled substances, a practitioner using telemedicine services in the provision of medical services to a patient (whether existing or new) must take appropriate steps to establish the practitioner-patient relationship as defined in Virginia Code § 54.1-3303. A practitioner should conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the particular patient presentation. As such, some situations and patient presentations are appropriate for the utilization of telemedicine services as a component of, or in lieu of, in-person provision of medical care, while others are not. The practitioner is responsible for making this determination, and in doing so must adhere to applicable laws and standards of care.

The Board has developed these guidelines to educate licensees as to the appropriate use of telemedicine services in the practice of medicine. The Board is committed to ensuring patient access to the convenience and benefits afforded by telemedicine services, while promoting the responsible provision of health care services.

It is the expectation of the Board that practitioners who provide medical care, electronically or otherwise, maintain the highest degree of professionalism and should:

- Place the welfare of patients first;

- Maintain acceptable and appropriate standards of practice;
- Adhere to recognized ethical codes governing the applicable profession;
- Adhere to applicable laws and regulations;
- In the case of physicians, properly supervise non-physician clinicians when required to do so by statute; and
- Protect patient confidentiality.

Section Two: Establishing the Practitioner-Patient Relationship.

The practitioner-patient relationship is fundamental to the provision of acceptable medical care. It is the expectation of the Board that practitioners recognize the obligations, responsibilities, and patient rights associated with establishing and maintaining a practitioner-patient relationship. Where an existing practitioner-patient relationship is not present,[1] a practitioner must take appropriate steps to establish a practitioner-patient relationship consistent with the guidelines identified in this document, with Virginia law, and with any other applicable law.[2] While each circumstance is unique, such practitioner-patient relationships may be established using telemedicine services provided the standard of care is met.

A practitioner is discouraged from rendering medical advice and/or care using telemedicine services without (1) fully verifying and authenticating the location and, to the extent possible, confirming the identity of the requesting patient; (2) disclosing and validating the practitioner's identity and applicable credential(s); and (3) obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding the use of telemedicine services. An appropriate practitioner-patient relationship has not been established when the identity of the practitioner may be unknown to the patient.

Section Three: Guidelines for the Appropriate Use of Telemedicine Services.
The Board has adopted the following guidelines for practitioners utilizing telemedicine services in the delivery of patient care, regardless of an existing practitioner-patient relationship prior to an encounter.

Licensure:

The practice of medicine occurs where the patient is located at the time telemedicine services are used, and insurers may issue reimbursements based on where the practitioner is located. Therefore, a practitioner must be licensed by, or under the jurisdiction of, the regulatory board of the state where the patient is located and the state where the practitioner is located. Practitioners who treat or prescribe through online service sites must possess appropriate licensure in all jurisdictions where patients receive care. To ensure appropriate insurance coverage, practitioners must make certain that they are compliant with federal and state laws and policies regarding reimbursements.

[1] This guidance document is not intended to address existing patient-practitioner relationships established through in-person visits.
[2] The practitioner must adhere not only to Virginia law defining a practitioner-patient relationship, but the law in any state where a patient is receiving services that defines the practitioner-patient relationship.

Evaluation and Treatment of the Patient:

A documented medical evaluation and collection of relevant clinical history commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided must be obtained prior to providing treatment, which treatment includes the issuance of prescriptions, electronically or otherwise. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional, in-person encounters. Treatment, including issuing a prescription based solely on an online questionnaire, does not constitute an acceptable standard of care.

Informed Consent:

Evidence documenting appropriate patient informed consent for the use of telemedicine services must be obtained and maintained. Appropriate informed consent should, as a baseline, include the following:

- Identification of the patient, the practitioner, and the practitioner's credentials;
- Types of activities permitted using telemedicine services (e.g. prescription refills, appointment scheduling, patient education, etc.);
- Agreement by the patient that it is the role of the practitioner to determine whether or not the condition being diagnosed and/or treated is appropriate for a telemedicine encounter;
- Details on security measures taken with the use of telemedicine services, such as encrypting date of service, password protected screen savers, encrypting data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures;
- Hold harmless clause for information lost due to technical failures; and
- Requirement for express patient consent to forward patient-identifiable information to a third party.

Medical Records:

The medical record should include, if applicable, copies of all patient-related electronic communications, including patient-practitioner communication, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telemedicine services. Informed consents obtained in connection with an encounter involving telemedicine services should also be filed in the medical record. The patient record established during the use of telemedicine services must be accessible to both the practitioner and the patient, and consistent with all established laws and regulations governing patient healthcare records.

Privacy and Security of Patient Records and Exchange of Information:

Written policies and procedures should be maintained for documentation, maintenance, and transmission of the records of encounters using telemedicine services. Such policies and

procedures should address (1) privacy, (2) health-care personnel (in addition to the practitioner addressee) who will process messages, (3) hours of operation, (4) types of transactions that will be permitted electronically, (5) required patient information to be included in the communication, such as patient name, identification number and type of transaction, (6) archival and retrieval, and (7) quality oversight mechanisms. Policies and procedures should be periodically evaluated for currency and be maintained in an accessible and readily available manner for review.

Section Four: Prescribing.

Prescribing controlled substances requires the establishment of a bona fide practitioner-patient relationship in accordance with § 54.1-3303 (A) of the Code of Virginia. Prescribing controlled substances, in-person or via telemedicine services, is at the professional discretion of the prescribing practitioner. The indication, appropriateness, and safety considerations for each prescription provided via telemedicine services must be evaluated by the practitioner in accordance with applicable law and current standards of practice and consequently carries the same professional accountability as prescriptions delivered during an in-person encounter. Where such measures are upheld, and the appropriate clinical consideration is carried out and documented, the practitioner may exercise their judgment and prescribe controlled substances as part of telemedicine encounters in accordance with applicable state and federal law.

Prescriptions must comply with the requirements set out in Virginia Code §§ 54.1-3408.01 and 54.1-3303(A). Prescribing controlled substances in Schedule II through V via telemedicine also requires compliance with federal rules for the practice of telemedicine. Practitioners issuing prescriptions as part of telemedicine services should include direct contact for the prescriber or the prescriber's agent on the prescription. This direct contact information ensures ease of access by pharmacists to clarify prescription orders, and further facilitates the prescriber-patient-pharmacist relationship.

For the purpose of prescribing Schedule VI controlled substances, "telemedicine services" is defined as it is in § 38.2-3418.16 of the Code of Virginia. Under that definition, *"telemedicine services," as it pertains to the delivery of health care services, means the use of electronic technology or media, including interactive audio or video, for the purpose of diagnosing or treating a patient or consulting with other health care providers regarding a patient's diagnosis or treatment. "Telemedicine services" does not include an audio-only telephone, electronic mail message, facsimile transmission, or online questionnaire*.

Section Five: Electronic Medical Services That Do Not Require Licensure.

The Code of Virginia has two sections of law that are pertinent to telemedicine and the requirement of a Virginia license to provide services to a patient residing in the Commonwealth.

The first is the "consultant exemption" found in § 54.1-2901 which lists Exceptions and Exemptions Generally to licensure. Subsection (A)(15) reads as follows: "*Any legally qualified out-of-state or foreign practitioner from meeting in consultation with legally licensed practitioners in this Commonwealth*." This statute is intended to have a Virginia practitioner involved in the care of the patient when a practitioner in another state/country consults with the

Virginia practitioner or the patient. It provides an opportunity for Virginia residents to benefit from the expertise of practitioners known for specializing in certain conditions. There must be regular communication between the consultant and the Virginia practitioner while the consultation/care is being provided.

The second section of the Code of Virginia pertinent to telemedicine is § 38.2-3418.16 of the Code of Virginia, which provides the definition of telemedicine in the Insurance Title. The section enumerates what does and what does not constitute telemedicine. Section 38.2-3418.16 defines telemedicine as "*the use of electronic technology or media, including interactive audio or video, for the purpose of diagnosing or treating a patient, providing remote patient monitoring services, or consulting with other health care providers regarding a patient's diagnosis or treatment, regardless of the originating site and whether the patient is accompanied by a health care provider at the time such services are provided*." To practice telemedicine into Virginia requires a license from the Board of Medicine. The Board notes that § 38.2-3418.16 states "Telemedicine services" does not include an audio-only telephone, electronic mail message, facsimile transmission, or online questionnaire. The Board believes that these communications do not constitute telemedicine, and therefore do not require licensure, when used in the follow-up care of a Virginia resident with whom a bona fide practitioner-patient relationship has been previously established. The establishment of a new practitioner-patient relationship requires a Virginia license and must comport with the requirements for telemedicine found in § 54.1-3303 of the Code of Virginia.

Section six: Guidance Document Limitations.

Nothing in this document shall be construed to limit the authority of the Board to investigate, discipline, or regulate its licensees pursuant to applicable Virginia statutes and regulations. Additionally, nothing in this document shall be construed to limit the Board's ability to review the delivery or use of telemedicine services by its licensees for adherence to the standard of care and compliance with the requirements set forth in the laws and regulations of the Commonwealth of Virginia. Furthermore, this document does not limit the Board's ability to determine that certain situations fail to meet the standard of care or standards set forth in laws and regulations despite technical adherence to the guidance produced herein.

Statutory references:

§ 54.1-3303. Prescriptions to be issued and drugs to be dispensed for medical or therapeutic purposes only.

A. A prescription for a controlled substance may be issued only by a practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine who is authorized to prescribe controlled substances, a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed certified midwife pursuant to § 54.1-2957.04, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32.

B. A prescription shall be issued only to persons or animals with whom the practitioner has a bona fide practitioner-patient relationship or veterinarian-client-patient relationship. If a practitioner is providing expedited partner therapy consistent with the recommendations of the Centers for Disease Control and Prevention, then a bona fide practitioner-patient relationship shall not be required.

A bona fide practitioner-patient relationship shall exist if the practitioner has (i) obtained or caused to be obtained a medical or drug history of the patient; (ii) provided information to the patient about the benefits and risks of the drug being prescribed; (iii) performed or caused to be performed an appropriate examination of the patient, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; and (iv) initiated additional interventions and follow-up care, if necessary, especially if a prescribed drug may have serious side effects. Except in cases involving a medical emergency, the examination required pursuant to clause (iii) shall be performed by the practitioner prescribing the controlled substance, a practitioner who practices in the same group as the practitioner prescribing the controlled substance, or a consulting practitioner.

A practitioner who has established a bona fide practitioner-patient relationship with a patient in accordance with the provisions of this subsection may prescribe Schedule II through VI controlled substances to that patient.

A practitioner who has established a bona fide practitioner-patient relationship with a patient in accordance with the provisions of this subsection may prescribe Schedule II through VI controlled substances to that patient via telemedicine if such prescribing is in compliance with federal requirements for the practice of telemedicine and, in the case of the prescribing of a Schedule II through V controlled substance, the prescriber maintains a practice at a physical location in the Commonwealth or is able to make appropriate referral of patients to a licensed practitioner located in the Commonwealth in order to ensure an in-person examination of the patient when required by the standard of care.

A prescriber may establish a bona fide practitioner-patient relationship for the purpose of prescribing Schedule II through VI controlled substances by an examination through face-to-face interactive, two-way, real-time communications services or store-and-forward technologies when all of the following conditions are met: (a) the patient has provided a medical history that is available for review by the prescriber; (b) the prescriber obtains an updated medical history at the time of prescribing; (c) the prescriber makes a diagnosis at the time of prescribing; (d) the prescriber conforms to the standard of care expected of in-person care as appropriate to the patient's age and presenting condition, including when the standard of care requires the use of diagnostic testing and performance of a physical examination, which may be carried out through the use of peripheral devices appropriate to the patient's condition; (e) the prescriber is actively licensed in the Commonwealth and authorized to prescribe; (f) if the patient is a member or enrollee of a health plan or carrier, the prescriber has been credentialed by the health plan or carrier as a participating provider and the diagnosing and prescribing meets the qualifications for reimbursement by the health plan or carrier pursuant to § 38.2-3418.16; (g) upon request, the prescriber provides patient records in a timely manner in accordance with the provisions of § 32.1-127.1:03 and all other state and federal laws and regulations; (h) the establishment of a bona fide practitioner-patient relationship via telemedicine is consistent with the standard of care, and the standard of care does not require an in-person examination for the purpose of diagnosis; and (i) the establishment of a bona fide practitioner patient relationship via telemedicine is consistent with federal law and regulations and any waiver thereof. Nothing in this paragraph shall apply to (1) a prescriber providing on-call coverage per an agreement with another prescriber or his prescriber's professional entity or employer; (2) a prescriber consulting with another prescriber regarding a patient's care; or (3) orders of prescribers for hospital out-patients or in-patients….

C. A prescription shall only be issued for a medicinal or therapeutic purpose in the usual course of treatment or for authorized research. A prescription not issued in the usual course of treatment or for authorized research is not a valid prescription. A practitioner who prescribes any controlled substance with the knowledge that the controlled substance will be used otherwise than for medicinal or therapeutic purposes shall be subject to the criminal penalties provided in § 18.2-248 for violations of the provisions of law relating to the distribution or possession of controlled substances.

§ 54.1-3408.01. Requirements for prescriptions.

A. The written prescription referred to in § 54.1-3408 shall be written with ink or individually typed or printed. The prescription shall contain the name, address, and telephone number of the prescriber. A prescription for a controlled substance other than one controlled in Schedule VI shall also contain the federal controlled substances registration number assigned to the prescriber. The prescriber's information shall be either preprinted upon the prescription blank, electronically printed, typewritten, rubber stamped, or printed by hand.

The written prescription shall contain the first and last name of the patient for whom the drug is prescribed. The address of the patient shall either be placed upon the written prescription by the prescriber or his agent, or by the dispenser of the prescription. If not otherwise prohibited by law, the dispenser may record the address of the patient in an electronic prescription dispensing record for that patient in lieu of recording it on the prescription. Each written prescription shall be dated as of, and signed by the prescriber on, the day when issued. The prescription may be prepared by an agent for the prescriber's signature.

This section shall not prohibit a prescriber from using preprinted prescriptions for drugs classified in Schedule VI if all requirements concerning dates, signatures, and other information specified above are otherwise fulfilled.

No written prescription order form shall include more than one prescription. However, this provision shall not apply (i) to prescriptions written as chart orders for patients in hospitals and long-term-care facilities, patients receiving home infusion services or hospice patients, or (ii) to a prescription ordered through a pharmacy operated by or for the Department of Corrections or the Department of Juvenile Justice, the central pharmacy of the Department of Health, or the central outpatient pharmacy operated by the Department of Behavioral Health and Developmental Services; or (iii) to prescriptions written for patients residing in adult and juvenile detention centers, local or regional jails, or work release centers operated by the Department of Corrections.

B. Prescribers' orders, whether written as chart orders or prescriptions, for Schedules II, III, IV, and V controlled drugs to be administered to (i) patients or residents of long-term care facilities served by a Virginia pharmacy from a remote location or (ii) patients receiving parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion therapy and served by a home infusion pharmacy from a remote location, may be transmitted to that remote pharmacy by an electronic communications device over telephone lines which send the exact image to the receiver in hard copy form, and such facsimile copy shall be treated as a valid original prescription order. If the order is for a radiopharmaceutical, a physician authorized by state or federal law to possess and administer medical radioactive materials may authorize a nuclear medicine technologist to transmit a prescriber's verbal or written orders for radiopharmaceuticals.

C. The oral prescription referred to in § 54.1-3408 shall be transmitted to the pharmacy of the patient's choice by the prescriber or his authorized agent. For the purposes of this section, an authorized agent of

the prescriber shall be an employee of the prescriber who is under his immediate and personal supervision, or if not an employee, an individual who holds a valid license allowing the administration or dispensing of drugs and who is specifically directed by the prescriber.

Note: Guidance Document does not reflect recent federal guidance on HIPAA compliance during COVID-19 crisis. See Board website for more information.

Virginia Board of Physical Therapy
Guidance on Telehealth

Section One: Preamble

The Board of Physical Therapy recognizes that using telehealth services in the delivery of physical therapy services offers potential benefits in the provision of care. Advancements in technology have created expanded and innovative treatment options for physical therapist and clients. The appropriate application of these services can enhance care by facilitating communication between practitioners, other health care providers, and their clients. The delivery of physical therapy services by or under the supervision of a physical therapist via telehealth in physical therapy falls under the purview of the existing regulatory body and the respective practice act and regulations. The Virginia General Assembly has not established statutory parameters regarding the provision and delivery of telehealth services. Therefore, physical therapy practitioners must apply existing laws and regulations to the provision of telehealth services.

To reiterate, telehealth is used as a means to deliver physical therapy services already authorized within the scope of practice of physical therapy and within the standards for care and supervision established by the Board's laws and regulations. The use of telehealth, even during the course of a declared public health emergency, does not constitute a waiver of a practitioner's duty to follow existing standards of practice.

The Board issues this guidance document to assist practitioners with the application of current laws to telehealth service practices. These guidelines should not be construed to alter the scope of physical therapy practice or authorize the delivery of health care services in a setting, or in a manner, not authorized by law. For clarity, a physical therapist using telehealth services must take appropriate steps to establish the practitioner-patient (client) relationship and conduct all appropriate evaluations and history of the client consistent with traditional standards of care for the particular client presentation. As such, some situations and client presentations are appropriate for the utilization of telehealth services as a component of, or in lieu of, in-person provision of physical therapy care, while others are not. The practitioner is responsible for making this determination, and in doing so must adhere to applicable laws and standards of care.

The Board has developed these guidelines to educate licensees as to the appropriate use of telehealth services in the practice of physical therapy. The Board is committed to ensuring patient access to the convenience and benefits afforded by telehealth services, while promoting the responsible provision of physical therapy services.

It is the expectation of the Board that practitioners who provide physical therapy care, electronically or otherwise, maintain the highest degree of professionalism and should:

- Place the welfare of the client first;

- Maintain acceptable and appropriate standards of practice;
- Adhere to recognized ethical codes governing the physical therapy profession;
- Adhere to applicable laws and regulations;
- Properly supervise PTA's and support personnel;
- Protect client confidentiality.

Section Two: Definition

Telehealth is the use of electronic technology or media including interactive audio or video to engage in the practice of physical therapy. In this guidance document, "telehealth" does not include an audio-only telephone call, electronic mail message, facsimile transmission, or online questionnaire, where these communications are intended to be simple client communications rather than the practice or rendering of physical therapy services.

Section Three: Responsibility for and Appropriate Use of Technology

A client's appropriateness for evaluation and treatment via telehealth should be determined by the Physical Therapist on a case-by–case basis, with selections based on physical therapist judgment, client preference, technology availability, risks and benefits, and professional standards of care. A PT is responsible for all aspects of physical therapy care provided to a client, and should determine and document the technology used in the provision of physical therapy. Additionally, the PT is responsible for assuring the technological proficiency of those involved in the client's care. A PT's evaluation and supervisory responsibilities do not change with the use of telehealth to deliver physical therapy services.

Pursuant to 18VAC112-20-90(C), the role of the PTA does not change with provision of services through telehealth:

> *C. A physical therapist assistant may assist the physical therapist in performing selected components of physical therapy intervention to include treatment, measurement and data collection, but not to include the performance of an evaluation as defined in 18VAC112-20-10.*

Section Four: Verification of Identity

Given that in the telehealth clinical setting the client and therapist are not in the same location and may not have established a prior in-person relationship, it is critical, at least initially, that the identities of the physical therapy providers and client be verified. Photo identification is recommended for both the client and all parties who may be involved in the delivery of care to the client. The photo identification, at minimum, should include the name of the individual; however, personal information such as address or driver's license number does not have to be shared or revealed. The client may utilize current means, such as state websites, to verify the physical therapy provider is licensed in the originating jurisdiction (where the client is located and receiving telehealth services).

Section Five: Informed Consent

Clients should be made aware of any limitations that telehealth services present as compared to an in-person encounter for that client's situation, such as the inability to perform hands-on examination, assessment and treatment, clients should give consent to such services and evidence documenting appropriate client informed consent for the use of telehealth services should be obtained and maintained. Appropriate informed consent should, as a baseline, include the following:

- Identification of the client, the practitioner, and the practitioner's credentials;
- Types of activities permitted using telehealth services (e.g. such as photography, recording or videotaping the client.);
- Details on security measures taken with the use of telehealth services, as well as potential risks to privacy notwithstanding such measures;
- Hold harmless clause for information lost due to technical failures; and
- Requirement for express client consent to forward client-identifiable information to a third party.

Section Six: Physical therapist/Client Relationship

Developing a physical therapist/client relationship is relevant regardless of the delivery method of the physical therapy services. As alternative delivery methods such as telehealth emerge, it bears stating that the PT/client relationship can be established in the absence of actual physical contact between the PT and client. Just as in a traditional (in-person) encounter, once the relationship is established, the therapist has an obligation to adhere to the reasonable standards of care for the client (duty of care).

Section Seven: Licensure

Unless otherwise provided for telehealth services delivered during declared public health emergencies to ensure continuity of care (Section Fourteen), ~~T~~the practice of physical therapy occurs where the client is located at the time telehealth services are provided. A practitioner must be licensed by, or under the jurisdiction of, the regulatory board of the state where the client is located. Practitioners who evaluate or treat through online service sites must possess appropriate licensure in all jurisdictions where clients receive care.

Section Eight: Standards of Care

It is the responsibility of the PT to ensure the standard of care required both professionally and legally is met. As such, it is incumbent upon the PT to determine which clients and therapeutic interventions are appropriate for the utilization of technology as a component of, or in lieu of, in-person provision of physical therapy care. Physical therapy providers should be guided by professional discipline, best available evidence, and any existing clinical practice guidelines when practicing via telehealth. Physical therapy interventions and/or referrals/consultations made using technology will be held to the same standards of care as those in traditional (in-person) settings. The documentation of the telehealth encounter should be held at minimum to the

standards of an in-person encounter. Additionally, any aspects of the care unique to the telehealth encounter, such as the specific technology used, should be noted.

Section Nine: Privacy and Security of Client Records and Exchange of Information

In any physical therapy encounter, steps should be taken to ensure compliance with all relevant laws, regulations and codes for confidentiality and integrity of identifiable client health information. Written policies and procedures should be maintained for documentation, maintenance, and transmission of the records of encounters using telehealth services. Such policies and procedures should address (1) privacy, (2) health-care personnel (in addition to the practitioner addressee) who will process messages, (3) hours of operation, (4) types of transactions that will be permitted electronically, (5) required client information to be included in the communication, such as client name, identification number and type of transaction, (6) archival and retrieval, and (7) quality oversight mechanisms. Policies and procedures should be periodically evaluated for currency and be maintained in an accessible and readily available manner for review.

Section Ten: Client Records

The client record should include, if applicable, copies of all client-related electronic communications, including client-practitioner communication, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telehealth services. Informed consents obtained in connection with an encounter involving telehealth services should also be filed in the medical record. The client record established during the use of telehealth services should be accessible to both the practitioner and the client, and consistent with all established laws and regulations governing client healthcare records.

Section Eleven: Technical Guidelines

Physical therapy providers need to have the level of understanding of the technology that ensures safe, effective delivery of care. Providers should be fully aware of the capabilities and limitations of the technology they intend to use and that the equipment is sufficient to support the telehealth encounter, is available and functioning properly and all personnel are trained in equipment operation, troubleshooting, and necessary hardware/software updates. Additionally, arrangements should be made to ensure access to appropriate technological support as needed.

Section Twelve: Client Emergencies and Safety Procedures

When providing physical therapy services, it is essential to have procedures in place to address technical, medical, or clinical emergencies. Emergency procedures need to take into account local emergency plans. Alternate methods of communication between both parties should be established prior to providing telehealth services in case of technical complications. It is the responsibility of the provider to have all needed information to activate emergency medical services to the clients' physical location if needed at time of the services are being provided. If during the provision of services the provider feels that the client might be experiencing any

medical or clinical complications or emergencies, services should be terminated and the client referred to an appropriate level of service.

Section Thirteen: Guidance Document Limitations

Nothing in this document shall be construed to limit the authority of the Board to investigate, discipline, or regulate its licensees pursuant to applicable Virginia statutes and regulations. Additionally, nothing in this document shall be construed to limit the Board's ability to review the delivery or use of telehealth services by its licensees for adherence to the standard of care and compliance with the requirements set forth in the laws and regulations of the Commonwealth of Virginia. Furthermore, this document does not limit the Board's ability to determine that certain situations fail to meet the standard of care or standards set forth in laws and regulations despite technical adherence to the guidance produced herein. The guidance in this document does not extend to billing for telehealth services.

Section Fourteen: Telehealth during Declared Public Health Emergencies

Pursuant to Executive Order 57 (2020), as amended, health care practitioners with an active license issued by another state may provide continuity of care to their current patients who are Virginia residents through telehealth services for the duration of Amended Executive Order 51 (2020). Establishment of a relationship with a new patient requires a Virginia license unless pursuant to paragraphs 1 and 2 of Executive Order 57 (2020), as amended.